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SENATE

REPORT
No. 97-689

PROVIDING FOR THE DISPOSITION OF FUNDS APPROPRIATED TO PAY A JUDGMENT IN FAVOR OF THE COWLITZ TRIBE OF INDIANS IN INDIAN CLAIMS COMMISSION DOCKET NUMBERED 218 AND FOR OTHER PURPOSES

DECEMBER 18 (legislative day, NOVEMBER 30), 1982.—Ordered to be printed

Mr. COHEN, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2931]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2931) to provide for the disposition of funds appropriated to pay a judgment in favor of the Cowlitz Tribe of Indians in Indian Claims Commission docket numbered 218 and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

S. 2931 is a bill to provide for the use and distribution of funds appropriated to pay a judgment in favor of the Cowlitz Tribe of Indians in Indian Claims Commission Docket numbered 218 and for other purposes.

BACKGROUND

By Act of July 1, 1973 (87 Stat. 99), Congress appropriated monies to pay a judgment awarded in favor of the Cowlitz Tribe of Indians of the State of Washington by the Indian Claims Commission in docket no. 218. The monies are compensation for the taking by the United States over 100 years ago of Cowlitz Tribal lands located in what is now Lewis, Cowlitz, Clark, Pierce, Skamania and Wahkaiakum counties in the State of Washington.

Since the passage of 87 Stat. 99 legislation was introduced in both the 94th and 95th Congress to authorize the distribution of the appropriated monies ($1,550,000 in 1973) to the Cowlitz Tribe.

On November 18, 1974, the Secretary of the Interior submitted to the House of Representatives, pursuant to the Indian Judgment Fund

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Distribution Act, 25 U.S.C. 1401 et seq., a proposed plan for the distribution of the Cowlitz tribal judgment monies. The plan met with opposition from various members and factions of the Cowlitz tribe and consequently resolutions to disapprove the plan were introduced in both Houses of Congress in the 94th Congress.

However, to accommodate the Congress, the Secretary withdrew the plan because the Committees to which the plan was referred were unable to act on the plan within the 60 day time period for the disapproval of plans in 25 U.S.C. 1405.

No final action was taken on the legislation introduced in previous Congresses mainly because of perceived conflict among the members of the Cowlitz Tribe and resistance to such legislation from the Department of the Interior, resistance essentially to the proposal that the judgment monies would be distributed to a non-federally recognized tribe for tribal purposes, including the purchase of tribal lands.

S. 2931 has met similar resistance from the present Secretary of the Interior, mainly that there is no identified legal tribal entity with whom the Federal Government can legally fulfill its trust responsibility for the funds appropriated and the concern that S. 2931 would provide Federal recognition for the Cowlitz Tribe, thus circumventing the existing procedures within the Department of the Interior for the Federal recognition of new tribes.

The Cowlitz Tribe in testimony before the Senate Select Committee on Indian Affairs has unequivocally stated that it intends to seek Federal recognition pursuant to the rules of the Department of the Interior Federal Acknowledgment Project and that it does not seek such recognition by and through S. 2931. Furthermore, 25 U.S.C. 1401 does not require the distribution of judgment funds only to federally recognized tribes. Distribution of such funds can be made to "any Indian tribe, band, group, Pueblo, or community." Since the Cowlitz Tribe as presently organized meets the definitions of those to whom distributions can be made pursuant to 25 U.S.C. 1401 the Select Committee recommends that the distribution should be made.

The Department of the Interior, in its testimony before the Senate Select Committee on Indian Affairs on December 7, 1982, stated that a group of Cowlitz descendants, self-identified as the "Sovereign Cowlitz", represents a small percentage of the Cowlitz descendants and that they are opposed to S. 2931. That is not the case. Testimony of the Cowlitz representatives indicates that the organization once known as the "Sovereign Cowlitz" was not satisfied with the amount of the judgment originally awarded by the Indian Claims Commission and was opposed only to the distribution of that amount. Cowlitz tribal testimony before the Select Committee contains affidavits from members of the now non-functional "Sovereign Cowlitz" group avering to the fact that the group has ceased to function, that it had a limited purpose in relation to the fairness of amount of the judgment award only, that its members are enrolled members in the Cowlitz Tribe and fully support the passage of S. 2931.

LEGISLATIVE HISTORY

Mr. Bonker, for himself and Mr. Dicks, introduced H.R. 3612 on May 19, 1981. The bill was referred to the House Committee on Interior and Insular Affairs which held hearings on the bill on August 19, 1982 and again on September 28, 1982.

Mr. Groton, for himself and Senator Jackson introduced S. 2931 on September 17, 1982. The bill was referred to the Senate Select Committee on Indian Affairs.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Select Committee on Indian Affairs, by a poll of its members on December 15, 1982, recommends that the Senate pass S. 2931 without amendment.

SECTION-BY SECTION ANALYSIS

Section 1

Section 1 provides that certain funds awarded to the Cowlitz tribe in a claim against the United States will be distributed as provided in this bill.

Section 2

Subsection (a) provides that the Secretary of the Interior shall prepare a roll of persons who shall be entitled to share in such funds and establishes the enrollment criteria.

Subsection (b) provides that no person qualifying under subsection (a) shall be entitled to share if that person has shared in the award made to another tribe or is an enrolled member of another tribe.

Subsection (c) provides that certain members of the Yakima Tribe of Cowlitz descent may share in the award notwithstanding subsection (b).

Subsection (d) provides for the filing of application for inclusion on the roll and provides that the decision of the Cowlitz Tribe, in consultation with the Secretary, shall be final.

Section 3

Section 3 provides that 20 percent of the funds shall be set aside by the Secretary for lawful purposes, including the purchase of lands for the tribe. It further provides that lands purchased in fee shall be later taken in trust of the Cowlitz Tribe attains Federal recognition. The balance of the funds are to be distributed per capita to persons on the roll established by section 2. Provision is made for the payment of shares to heirs of deceased enrollees and to minors and persons under disabilities.

Section 4

Section 4 provides that none of the funds distributed per capita shall be subject to State or Federal income or inheritance taxes nor shall they be considered as other income or resources with respect to assistance under the Social Security Act.

COST AND BUDGETARY CONSIDERATIONS

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., December 15, 1982.

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed

S. 1931, a bill to provide for the disposition of funds appropriated to pay a judgment in favor of the Cowlitz Tribe of Indians in Indian Claims Commission docket numbered 218, and for other purposes, as ordered reported by the Senate Select Committee on Indian Affairs, December 15, 1982.

The bill directs that $1.55 million previously appropriated for awards to Cowlitz Tribe of Indians, plus interest and less attorney fees and litigation expenses, be disbursed to the Cowlitz Tribe after a roll of all eligible persons is established. Following the appropriation, the funds were set aside and invested for the tribe until such time as a distribution plan was developed and approved. Although the bill results in no additional cost to the Federal Government, the eventual disbursal of the award will be recorded as a budget outlay in the year it occurs.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2931 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The pertinent communication received by the Committee from the Department of the Interior is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 2, 1982.

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for our views of this Department on S. 2931, a bill "To provide for the disposition of funds appropriated to pay a judgment in favor of the Cowlitz Tribe of Indians in Indian Claims Commission docket number 218, and for other purposes."

We recommend enactment of S. 2931, if it is amended as suggested herein.

S. 2931 would provide for the distribution of funds appropriated to pay a judgment to the Cowlitz tribe of Indians in Indian Claims Commission docket numbered 218. The bill would authorize the Secretary of the Interior to set aside 20 percent of the judgment award for purposes authorized by the Cowlitz Tribal Council and for the purchase of land for the tribe and to distribute the balance of the award per capita to those eligible to participate in the distribution. The Secretary would be required to prepare a roll of all such persons.

On April 12, 1973, the Indian Claims Commission accepted a compromise proposal in docket 218, and awarded the Cowlitz Indians $1,550,000 as compensation for lands taken by the United States on

March 20, 1863, without benefit of treaty or compensation. Funds to cover this award were appropriated by the Act of July 1, 1972.

Presently, there is no federally-recognized successor to the aboriginal Cowlitz Tribe that was aggrieved in 1863. A group which identifies itself as "The Tribe of Cowlitz Indians of the State of Washington" was recognized for the purpose of prosecuting the Cowlitz claim against the United States. This organization, however, has not been recognized by the Federal Government as a tribal party.

A second group of Cowlitz descendants, self-identified as the "sovereign Cowlitz," represents a small percentage of the Cowlitz descendants. This group asserts that, since the Cowlitz never signed an agreement with the United States, it is still a sovereign, independent political entity and, therefore, is not subject to the laws or jurisdiction of the United States.

A third group derives its Cowlitz ancestry from the Cowlitz who, in the early part of this century, moved from their aboriginal homeland to the Yakima Reservation to take advantage of better employment opportunities. This group represents between 55 and 60 percent of the lineal descendants of the aboriginal Cowlitz of 1863. The majority of these individuals are presently enrolled members of the Yakima Tribe of the Yakima Reservation, Washington. A fourth group is composed of those Cowlitz descendants unaffiliated with any of the above.

Pursuant to the Indian Judgment Funds Act of October 19, 1973, a hearing of record was held on June 1, 1974, at Cowlitz Prairie, Washington. The subject of the hearing was a proposal submitted by "The Tribe of Cowlitz Indians" for the distribution of the judgment funds.

Except for the inclusion of the Yakima descendants, this plan was similar to S. 2931. The transcript of the hearing indicates that about half of the 168 persons present favored the plan. The majority of those favoring this proposal were descendants of the Cowlitz who continued to live in the aboriginal area.

Considerable opposition to the plan was voiced at the hearing from those Cowlitz descendants affiliated with the Yakima tribes. They submitted a resolution, supported by a petition with 194 signatures, calling for a full per capita distribution. An additional 116 individual letters were also sent to the Bureau of Indian Affairs requesting that the judgment funds be distributed on a per capita basis to all those who can prove lineal descendancy from the Cowlitz Indians of 1863.

On November 4, 1974, the Secretary submitted to the 94th Congress a plan for the distribution of the judgment funds. The Secretary's plan provided for a per capita distribution of the award to the lineal descendants of the Cowlitz Tribe as it existed in 1863. Due to the controversy generated over the plan and limited time to consider the proposal before the statutory 60-day period expired, the Department withdrew the plan from Congressional consideration at the request of the Chairmen of both the Senate and House Committees on Interior and Insular Affairs. No action was taken on similar bills introduced in subsequent Congresses.

A major impediment to the distribution of the Cowlitz judgment funds is identifying the entity with whom the Federal Government can legally fulfill its trust responsibility for these funds. As noted

above, at present there is no Federally-acknowledged organization of Cowlitz descendants. On September 17, 1975, the "Cowlitz Indian Tribe" submitted a petition to the Department for such acknowledgment. Subsequently, final regulations for determining eligibility for Federal acknowledgment were published. The petition was returned to the Tribe on January 9, 1979, for revisions in accordance with the procedure outlined in the regulations. To date, the petition has not been resubmitted, although we understand work on the revisions is in progress.

The following proposed amendments to S. 2931 would delete: (1) the bill's reference to the "Cowlitz Indian Tribe," since the status of this tribal entity is in question; (2) the provision for setting aside 20 percent of the award for tribal programming; (3) the requirement that an individual must have at least 1/16 Cowlitz blood in order to be eligible to participate in the award; and (4) those provisions which would create an inequity relating to the eligibility of enrolled members of the Yakima Tribe. Taken together, these proposed amendments would provide that the judgment funds in docket 218 be distributed per capita on a descendancy basis. The other amendments proposed are for clarification and are technical in nature.

RECOMMENDED AMENDMENTS

(1) Section 2 of S. 2931 would require the Secretary to prepare a roll of all persons eligible to participate in the distribution of judgment funds. Subsection 2(a)(2) would restrict eligibility to those persons with 1/16 or more Cowlitz blood. The scarcity of acceptable records on the Cowlitz Indians will make it difficult for many applicants to prove lineal descendancy from the aboriginal group. The only official government-sponsored roll is the "Scheduled of Unenrolled Indians" compiled by Special Indian agent Charles Robbin, dated January 1, 1919, some 56 years after the taking date of 1863. The additional requirement to prove a 1/16 blood quantum would further compilcate the roll preparation and delay the payment, significantly. Accordingly, we recommend that the blood degree limitation be deleted and the roll be prepared on a descendancy basis. Therefore, on page 2, lines 5 and 6 of subsection 2(a)(2), delete the phrase ", of one-sixteenth degree or more of Cowlitz blood,".

(2) Section 2(a)(3) would vest the "Cowlitz Indian Tribe" with veto authority concerning the eligibility for inclusion on the Secretary's payment roll. Since the status of the tribal entity is in question, we recommend that the phrase "the Cowlitz Indian Tribe and" be deleted on page 2, line 11 of section 2(a)(3).

(3) Section 2(b) would prohibit any person who has shared in or is eligible to share in a judgment award or who is an enrolled member of another tribe from sharing in this award. Section 2(c), however, would exempt enrolled members of the Yakima Tribe (who have continued their interest and support of the Cowlitz Tribe) from this prohibition.

These two sections would, in effect, eliminate all Cowlitz descendants, regardless of blood quantum, with the single exception of those members of the Yakima Tribe who have supported the "Cowlitz Tribe." This would create an inequitable situation. Therefore, we recommend that sections 2(b) and 2(c) be deleted. Section 2(a), as

amended above, would not preclude any eligible enrolled member of the Yakima Tribe from participating in the distribution. As indicated above, these members of the Yakima Tribe are lineal descendants of those Cowlitz who moved from their aboriginal homeland to the Yakima Reservation to seek better employment opportunities.

In this regard, we would note that is not unusual for persons who are enrolled members of one tribe to share in a per capita distribution as descendants of a different aboriginal entity. For example, the distribution of awards to the Kiowa, Comanche and Apache Tribes under the Act of September 21, 1959, and the Act of September 28, 1968, permitted payment of per capita shares to persons who were eligible as descendants of one entity but were enrolled members of different tribes. A similar situation occurred with the Mississippi Sioux Tribes under the Act of October 25, 1972, and the Otoe-Missouria under the Act of October 14, 1966.

(4) Section 2(d) would give the "Cowlitz Tribal Council" the responsibility, in consultation with the Secretary, for determining the rolls that will be the basis for eligibility for payment. Section 2(d) is similar to section 2(a)(3), in that it would vest the "Cowlitz Tribal Council" with final authority to determine the eligibility for enrollment of an applicant and records to be used as the basis of this determination. Again, since the tribal status of this group remains in question, we recommend deletion of section 2(d). However, we would emphasize that this would not preclude representatives of the Cowlitz Indians from expressing their views, since the Department's enrollment regulations provide for the review of applications by tribal authorities.

(5) Section 3(a) of the bill would set aside 20 percent of the award for expenditures authorized by the "Cowlitz Tribal Council" and for the purchase of land; the "Council" would be authorized to purchase land in fee patent. In the event that this group achieves Federal acknowledgment, the land would become the Cowlitz Reservation and would be taken into trust by the Department. However, since the "Cowlitz Indian Tribe" does not have a government-to-government relationship with the United States at this time, we recommend that section 3(a) be deleted, thereby providing that all of the judgment funds be distributed per capita. For technical consistency, section 3 should also be amended by deleting the words "as follows:" on page 3, line 7, and the phrase "(b) The balance shall be distributed" on the same page, line 19.

(6) Finally, we recommend that a new section be added at the end of the bill to read as follows:

"SEC. 5. The Secretary is authorized to prescribe rules and regulations to carry out the provisions of this Act."

Subject to these amendments, we would recommend enactment of S. 2931.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

KENNETH L. SMITH,
Assistant Secretary.

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